

S/N: 10/622,247
Docket : CS01-150
Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 8

Remarks/Arguments

Examiner Paul Kim is thanked for the thorough Office Action.

In the Claims

The claims are amended to correct grammatical and typographical errors.

Claims 1, 7, 23, and 25 are amended to provide the proper article "a" for "goodness of fit value".

Claim 1, step a), to correct a grammatical error, "of" is changed to at . For support see spec. p. 6, LL 9-10.

Claim 25, step d, is amended to provide proper antecedent bases for "goodness of fit value".

No new matter is added.

These are not amendments made in response to prior art and should not invoke FESTO limitations.

35 USC 102 Rejections

Rejection of Claims 1-5 and 25 are under 35 U.S.C. 102(e) as being anticipated by Onyshkevych et al.

Rejection of Claims 1-5 and 25 are under 35 U.S.C. 102(e) as being anticipated by Onyshkevych et al. is acknowledged. Reconsideration and withdrawal of the rejection is respectfully requested in view of the following remarks.

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| <p>Claim 1 states:</p> |
| <p>1. (CURRENTLY AMENDED) A test method comprising:</p> <ul style="list-style-type: none">a) obtaining test measurement values on a device of <u>at</u> one or more independent variable values;b) calculating the <u>a</u> goodness of fit value for a fitted curve between : (1) said test measurement values; and (2) the independent variable values;c) using said goodness of fit value to monitor the processes used to form said |

S/N: 10/622,247
 Docket : CS01-150
 Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 9

 device.

Claim 1 is not met or suggested by Onyshkevych et al..

The table below is a comparison between Claim 1 and reference Onyshkevych et al.

Table: Comparison between Claim 1 and reference Onyshkevych et al.

| Claim 1 states: | Onyshkevych et al. |
|--|--|
| 1. (CURRENTLY AMENDED) A test method comprising: | |
| a) obtaining test measurement values on a device of one or more independent variable values; | Not shown- Onyshkevych only measures one independent variable (the looseness (Fit) or the garment) |
| b) calculating the a goodness of fit value for a fitted curve between : (1) said test measurement values; and (2) the independent variable values; | Not shown or suggested- No calculation of a regression or curve fit line. |
| c) using said goodness of fit value to monitor the processes used to form said device. | No shown or suggested- no using the goodness of fit value to monitor the process used to form the garments |

As shown above, claim 1 steps a b and c are not shown or suggested by Onyshkevych et al. .

Applicant's claim 1, step a is not suggested by Onyshkevych et al.

Applicant's claim 1, step a is not suggested by Onyshkevych. Onyshkevych only measures one independent variable (the looseness (Fit) or the garment).

Applicant's claim 1, step b is not suggested by Onyshkevych et al.

The instant Office Action posits on page 2,

With regard to claims 1, Onyshkevych et al teaches a test method comprising:
 a) obtaining test measurement values on a device of one or more of independent variable values (fig. 1);
 b) calculating the goodness of fit value for a fitted curve between: the test

S/N: 10/622,247
 Docket : CS01-150
 Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 10

measurement values and the independent variable values (col. 7, lines 28-30); and c) using the goodness of fit value to monitor the processes used to form the device (fig. 5 & col. 17, lines 51+).

However, this analysis misinterprets many key words and concepts. As discussed above and below, applications claim 1 is not met because Onyshkevych does not create a "fitted curve.." and does not calculate a "goodness of fit value" as define in applicant's claims, and spec.

It is important to understand that "fit" as used in Onyshkevych means
 Fit – a. To be the proper size and shape for: *These shoes fit me*

The American Heritage® Dictionary of the English Language, Fourth Edition
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<http://dictionary.reference.com/search?q=fit>

Onyshkevych et al. (col. 7, lines 28-30) states

Garment Fit Rating: The combination of all Dimensional Fit Ratings for a particular size and style of garment;
 the indicia of "goodness of fit" for that size and style of garment.

Onyshkevych et al. (col. 7, lines 1-3)

Dimensional Fit Rating: The Fit Rating assigned to the fit for a particular garment style for a particular size for a particular dimension

Also see col. 10, lines 35 to 67.

Onyshkevych et al. (col. 7, lines 28-30) does not meet applicant's claim 1, step b limitation because Onyshkevych does not teach claim 1 step b "calculating the goodness of fit value for a fitted curve between: the test measurement values and the independent variable values". Non-limiting Examples of claim 1 goodness of fit test can correlation coefficients (r or r-sq), standard error of the regression, F test statistics, or other types of statistics that evaluate the difference between the predicted values of the regression to the actual measured values. See specification p. 12, section B. Onyshkevych does not calculate an fitted curve or regression nor calculate a "goodness of fit value".

S/N: 10/622,247
 Docket : CS01-150
 Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 11

 In further contrast, Onyshkevych describes a dependent variable called "Garment rating" that is a combination of other dependent variables (e.g., measured values or all dimensional fit ratings for a particular size and style of garment). (col. 7, lines 26-30)

Onyshkevych's "Garment rating" is "the indicia of "goodness of fit" for that size and style of garment." (col. 7, lines 28-30) See figure 3 that shows garment fit ratings.

In Onyshkevych, "goodness of fit" is a dependent variable (or combination of dependent variables) **that describes how tight or loose the particular garment is on a consumers body (or IBM)** ". See figure 3, See col. 10, lines 60 to 67). In contrast, in claim 1, step b, "goodness of fit value" is a statistical value for a "fitted curve between the (1) test measurements and (2) the independent variables". No where does Onyshkevych suggest fitting a curve between (1) measured variables (test measurement values) and (2) independent variables.

The office action is misinterpreting Onyshkevych's col. 7, lines 28-30 "the indicia of "goodness of fit" for that size and style of garment."

Claim 1, step C is not met and is non-obvious over Onyshkevych

Claim 1 step c states:

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| using said goodness of fit value to monitor the processes used to form said device. |
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Claim 1, step c is not met by Onyshkevych. As stated above, Onyshkevych does not calculate a "goodness of fit value" in claim 1 step (b). Onyshkevych, in contrast, has a dependent variable or combination of dependent variables. Onyshkevych does not use a statistical "goodness of fit value" for a fitted curve.

The Office Action page 2 posits that Onyshkevych (fig. 5 & col. 17, lines 51+) meets applicants claim 1, step c, . However, Onyshkevych merely describes a website where a customer can order garments. See (fig. 5 & col. 17, lines 51+). Figure 5 does not show any mechanism to "monitor the processes used to form said device".

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| Onyshkevych, col. 17, lines 51+) states: |
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| Customer Interaction with the Main Website |
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| The customer interacts with the system in many ways. For example, the customer enters a body scanner and is digitized. The scan is processed and stored in the database. The customer also interacts with the system by |
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S/N: 10/622,247

Page 12

Docket : CS01-150

Reply to the Office action (ROA#3) dated 26 Jan. 2006

completing a preference questionnaire, which assesses style and fit parameters as part of the scanning or body measurement data collection process. These responses are also stored in the database. The customer can provide sizing details on-line by one or more of the following: entering the brand and size of garment which fit; entering one's known measurements; printing out a form and having a tailor or other individual take measurement which are then entered into the database; self-measurement; using an electronic tape measure or hand-held scanning device to assist with self-measurement; self-measurement using a tape measure; or other measuring device. These measurements are processed in the system and a reduced-precision size model of the customer is created and stored in the database.

Claims 2 and 3 are non-obvious over Onyshkevych

Claims 2 and 3 state:

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| 2. (ORIGINAL) The method of claim 1 wherein step (c) further includes using control limits on the goodness of fit values. 3. (ORIGINAL) The method of claim 1 wherein step (c) further includes using control limits on the goodness of fit values; said control limits established based on a history of goodness of fit values or on device requirements. |
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Claims 2 and 3 are not met or suggested by Onyshkevych.

The instant Office Action page 2 states:

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| With regard to claims 2 and 3, Onyshkevych et al teaches using control limits on the goodness of fit values; the control limits established based on device requirements (col. 14, lines 5+). |
|---|

Onyshkevych (col. 14, lines 5+) appears to be an example of how to design a garment that will properly fit a customer. Onyshkevych does not show or suggest a claims 2 and 3 using control limits to control the process of making a device (e.g., garment). As discussed above parent claim 1 is not met.

Claim 4 is patentable over Onyshkevych

Claim 4 states:

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| 4. The method of claim 1 wherein the goodness of fit value is a correlation coefficient or a standard error measurement. |
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S/N: 10/622,247
Docket : CS01-150
Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 13

The office action states:

With regard to claim 4, Onyshkevych et al teaches goodness of fit being a correlation coefficient (col. 6, lines 55-67).

Onyshkevych (col. 6, lines 55-67) states:

Curve: The graphical representation, by dimension, of the fit scores for different body sizes in a particular dimension, for a given size garment. Along the x-axis, Ease increases and body measurement decreases; along the y-axis, Dimensional Fit Rating increases, for example, from 0 to 1. The Inflection Points of the Curves vary by garment size, garment style, Grade, and Fabric Factors and personal Preference Factors. Curves are piecewise linear. Ease increases along the x-axis and Dimensional Fit Rating increases along the y-axis. Body dimension decreases along the x-axis. Accordingly, as you move left along the curve, the garment gets tighter; as you move right along the curve, the garment gets looser.

Onyshkevych (col. 6, lines 55-67) does not suggest calculating a "goodness of fit value" that is a correlation coefficient or a standard error measurement. Onyshkevych does not even make a "fitted curve" between the (1) test measurement values and (2) the independent variable values.

Claim 5 is not met or suggested by Onyshkevych

Claim 5 states: "5. (ORIGINAL) The method of claim 1 wherein the fitted curve is a least squares fitted straight line."

The office action on page 5 posits: "With regard to claim 5, Onyshkevych et al teaches the fitted curve being a least squares fitted straight line (fig. 1, F through H)."

A reading of Onyshkevych (fig. 1, F through H) failed to find any "fitted curve" and any fitted curve being a least squares fitted straight line". Applicant respectfully requests that the specific line and figure cite be provided in the next office action.

Parent Claim 25 is patentable over Onyshkevych
parent claim 25 states:

25. (CURRENTLY AMENDED) A test method comprising:
a) providing a device structure that has at least a first test structure, a test measurement can be obtained from said first test structure;

S/N: 10/622,247
Docket : CS01-150
Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 14

b) measuring a first test measurement of the test structures;
c) calculating the a goodness of fit value for a fitted curve between :
(1) a first test measurement performed under a first test condition and
(2) a second test measurement performed under a second test condition;
using said goodness of fit value ~~measurement~~ to: (1) control the processes used to form the device or (2) screen the devices.

Parentclaim25containssimilarlimitation as in at least claims 1 and 2 and is therefore patentable for the reasons give above with respect to those claims.

In addition, step c is not met. Step c (1) and (2) state: "(1) a first test measurement performed under a first test condition and (2) a second test measurement performed under a second test condition; ". Onyshkevych does not make any measurement under 2 conditions (such as fit measurement at 2 different temperatures, or humilities). Therefore claim 25 is patentable.

Rejection of Claims 6 and 24 under 35 U.S.C. 103(a) as being unpatentable over Onyshkevych et al in view of Chondroudís et al.

The rejection of Claims 6 and 24 under 35 U.S.C. 103(a) as being unpatentable over Onyshkevych et al in view of Chondroudís et al. is acknowledged. Reconsideration and withdrawal of the rejection is respectfully requested in view of the comments.

The office action on page 3 and 4 posits:

Onyshkevych et al teaches the test parameter being fit score but does not teach the test parameter being capacitance. Chondroudís et al teaches a method of calculating the goodness of fit value for thickness and capacitance (P 162). Since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations (Ex Parte Masham, 2 USPQ F.2d 1647 (1987)), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Onyshkevych et al so that the test parameter is capacitance, as taught by Chondroudís et al, so as to derive the benefit of increased system versatility by being able to measure a wide variety of variables.

S/N: 10/622,247
 Docket : CS01-150
 Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 15

First, as stated on the Office Action page 3 "Onyshkevych et al teaches the test parameter being fit score". This is correct. However, Parent claim 1, does not teach a "test parameter being fit score". Therefore claim 6 is patentable.

Secondly, it is improper to combine Onyshkevych and Chondroudis because the two methods are incompatible and can not be combined. Onyshkevych teaches a method to measure "how tight or loose a garment has the proper size and shape." and how to determine the appropriate size garment. See Onyshkevych abstract and claims. In contrast, Chondroudis teaches a system for R&D of films (See claim 1). There is no suggestion they be combined. The combination can only be done by hindsight. As explained below, the point Chondroudis [00165] is used to make is not supported by Chondroudis.

Third, the Office Action argues that "Chondroudis et al teaches a method of calculating the goodness of fit value for thickness and capacitance (P 162)." However, Chondroudis merely states:

Referring again to FIG. 23, an initial filter 2014 may be used to check the goodness of fit of the optical spectra; for those films meeting the set criteria (e.g., goodness of fit of at least about 9850), the thickness and capacitance are used to calculate the dielectric constant for the sample, which is then stored in the database with the rest of the information collected for that sample.

Therefore Chondroudis does not calculate the "goodness of fit value" for thickness and capacitance. In contrast, Chondroudis "the thickness and capacitance are used to calculate the dielectric constant for the sample".

The rejection of Claim 23 under 35 U.S.C. 103(a) as being unpatentable over Onyshkevych et al.

The rejection of Claim 23 under 35 U.S.C. 103(a) as being unpatentable over Onyshkevych et al. is acknowledged. Reconsideration and withdrawal of the rejection is respectfully requested in view of the amendments.

Claim 23 states:

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| 23. (CURRENTLY AMENDED) A test method comprising: | Onyshkevych et al. |
| a) providing a device structure that has at least a first test structure, a second test | |

S/N: 10/622,247

Page 16

Docket : CS01-150

Reply to the Office action (ROA#3) dated 26 Jan. 2006

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| structure and a third test structure from which a test parameter is measured; | |
| b) measuring the test parameter values on the test structures; | Not shown – Onyshkevych only measures the "degree of proper size (fit)" on each position on the garment – Onyshkevych does not measure a plurality of test parameter values" (values is plural which means more than one. |
| c) calculating the a goodness of fit value for a fitted curve between : (1) the test parameter values and (2) a dimensional measurement of the test structures; | Not shown- see arguments for claim 1 |
| d) using said goodness of fit value to: (1) control the processes used to form the device structures or (2) screen the device structures. | Not shown- see arguments for claim 1 |

Claim 23 is non-obvious for the reasons stated above for claim 1.

Furthermore, claim 23, step b, is not met by Onyshkevych. Onyshkevych only measures the "degree of proper size (fit)" on each position on the garment. See Onyshkevych claim 1, figure 1. Onyshkevych does not measure a plurality of test parameter values" (values is plural which means more than one.)

The Office Action states :

Onyshkevych et al teaches a test method comprising: a) providing a device that has at least a first test structure in which a test measurement can be obtained (col. 1, lines 15-18); b) calculating the goodness of fit value for a fitted curve between: the test measurement values and the independent variable values (col. 7, lines 28-30); and c) using the goodness of fit value to control the processes used to form the device (fig. 5 & col. 17, lines 51+). Onyshkevych et al does not teach the device structure having more than one test structure. Since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art (St. Regis Paper Co. v. Bemis Co., 193 USPQ 8 (1977)), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Onyshkevych et al so that more than one test structure is measured, so as to derive the benefit of increased system flexibility by being able to measure a variety of different structures.

As stated above, Onyshkevych does not met the essential elements of the claim. Furthermore, it is not a mere duplication of working part... Claim 23 is a method of control that requires 3 test structures. This is not a trivial element and can not be developed without hindsight.

S/N: 10/622,247
Docket : CS01-150
Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 17

Rejection of Claim 26 under 35 U.S.C. 103(a) as being unpatentable over
Onyshkevych et al in view of Hovde.

The rejection of Claim 26 under 35 U.S.C. 103(a) as being unpatentable over
Onyshkevych et al in view of Hovde.

Claim 26 states: “ (ORIGINAL) The method of claim 25 wherein: said first
test condition and said second test condition are different temperatures. “

It is non-obvious to combine Onyshkevych et al and Hovde. Onyshkevych
teaches a method to measure “how tight or loose a garment has the proper size and shape.” and
how to determine the appropriate size garment. See Onyshkevych abstract and claims. In
contrast, Hovde teaches a spectrometer instrument. The patents are from different fields. They do
not suggest combination. They are not compatible. The combination can only be done by
hindsight.

The Office Action states :

Onyshkevych et al teaches the test parameter being fit score but does not teach the
test parameters being temperature.
Hovde teaches a method of calculating the goodness of fit value being temperature
(col. 10, lines 21 -31). Since it has been held that a recitation with respect to the
manner in which a claimed apparatus is intended to be employed does not
differentiate the claimed apparatus from a prior art apparatus satisfying the claimed
structural limitations (Ex Parte Masham, 2 USPQ F.2d 1647 (1987)), it would have
been obvious to one of ordinary skill in the art, at the time of the invention, to modify
Onyshkevych et al, so that the test parameter is temperature, as taught by Hovde,
so as to derive the benefit of increased system versatility by being able to measure a
wide variety of variables.

As discussed above, the parent claim is allowable therefore claim 26 is
allowable.

Second, Hovde (col. 10, lines 21 -31) states:

For a stand-alone instrument designed to work at an even wider range of temperatures or pressures than
can be accommodated by this derivative fitting approach, it may prove advantageous to compute several
matrices U, each optimized for certain conditions.

S/N: 10/622,247
Docket : CS01-150
Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 18

Hovde (col. 10, lines 21 -31) appears to state that the “ derivative fitting approach” should be performed at the temperature and pressure that the instrument will actually be working/operating at. Hovde does not appear to meet claim 26.

Allowable claims

The objection to claim 27 as being dependent upon a rejected base claim 25 but allowable if rewritten in independent form is acknowledged. Applicant requests that the rewriting of allowable claim 27 be held in abeyance pending the final determination of the allowability of the parent claim 25.

The allowance of claims 7-22 is gratefully acknowledged.

All Pending Claims Addressed

It is believed that all the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of the unpatentability of the claim prior to its amendment.

CONCLUSION

In conclusion, reconsideration and withdrawal of the rejections are respectfully requested. Allowance of all claims is requested. Issuance of the application is requested.

It is requested that the Examiner telephone the undersigned attorney at (215) 670-2455 should there be anyway that we could help to place this Application in condition for Allowance.

S/N: 10/622,247
Docket : CS01-150
Reply to the Office action (ROA#3) dated 26 Jan. 2006

Page 19

Charge to Deposit Account

The Commissioner is hereby authorized to apply any fees or credits in this case, which are not already covered by check or credit card, to Deposit Account No. 502018 referencing this attorney docket. The Commissioner is also authorized to charge any additional fee under 37 CFR §1.16 and 1.17 to this Deposit Account.
Respectfully submitted,

/William J. Stoffel REG # 39,390/
William J. Stoffel date: 26 April 2006
Customer No. 30402

Stoffel Law Office
1735 Market St - Ste A455
Philadelphia, PA 19103-7502 USA
Telephone: 215-670-2455
Fax: 267-200-0730

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